

# **EXHIBIT 6**

**Filed Under Seal**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

CIVIL NO.: 18-1776 (JRT/HB)

IN RE PORK ANTITRUST LITIGATION

This Document Relates to:

All Actions

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RONALD FREED

July 28, 2022

1 reports.

2 Q. What about every month?

3 A. There are not monthly reports.  
4 I'm thinking that the cold storage  
5 reports are definitely monthly and the  
6 Foreign Agricultural Service's reports  
7 are also -- no, they're weekly.

8 Q. So, I mean, what are we talking  
9 just in an average month? How many --  
10 like ballpark estimate, how many rows of  
11 data would you estimate the USDA is  
12 putting out to the world about supply in  
13 this industry?

14 MR. SHIFTAN: Objection to form.

15 A. So on the supply side, it's --  
16 it's not lots of rows of data because,  
17 you know, the data we're talking about is  
18 somewhat simplistic. It's -- it's number  
19 of head of hogs and it's pounds of hogs,  
20 so it's not lots of rows.

21 Q. And let me ask this. What about  
22 the same types of questions when it comes  
23 to pork, right, the finished product.

24 A. Right.

25 Q. Does the USDA also put out

1 information about pork supply?

2 A. Pork supply, I would say no,  
3 other than that pork supply is a  
4 numerical -- it's a multiplier of hog  
5 supply.

6 Q. And the plaintiffs, they also  
7 have suggested that all the defendants,  
8 included Clemens, deanonymized Agri Stats  
9 data. Did you ever deanonymize Agri  
10 Stats data to figure out who's who?

11 A. No. You can't do it.

12 Q. What do you mean, you can't do  
13 it? Why not?

14 A. Each of the data lines are  
15 anonymous. There's no correlation that  
16 it's packer 1, packer 2. Even without  
17 name, there's nothing like that. Every  
18 line is anonymous.

19 Q. How many --

20 A. Other than your own data. Your  
21 own data is always identified as you.  
22 But everyone else's data is just -- it's  
23 just a packer.

24 Q. Well, just because it's  
25 anonymous, that doesn't mean you couldn't

1 do it. I mean, have you ever sat with a  
2 report and tried by pulling other data  
3 and outside data to deanonymize an Agri  
4 Stats report?

5 A. I don't think you could do it.  
6 I know you just said something opposite,  
7 but you can't do it.

8 Q. How sure are you that you can't  
9 do it?

10 A. I am like in the 99th percentile  
11 and more sure.

12 Q. Earlier today when you were  
13 asked some questions about price and our  
14 bids, you gave a quote. It was usually  
15 it's a race to the bottom, that's how  
16 competition works. What did you mean by  
17 that?

18 A. So I mean exactly that. Every  
19 buyer -- just as every packer would  
20 desire to sell higher, every vendor in  
21 any industry would desire -- desire to  
22 sell at higher prices, every buyer wants  
23 to buy lower. And as a general case  
24 statement, domestic U.S. per capita pork  
25 consumption has been declining for most

1 resist decreases.

2 Q. I want to pivot. So we talked  
3 about who controls hog supply, but now I  
4 want to pivot, and I want to talk about  
5 whether or not Clemens is happier in a  
6 world with a ton of hogs or when hog  
7 supply is really tight. Okay?

8 MS. COTTRELL: Can we pull up --  
9 I think it's tab 56, and we're going to  
10 mark it Freed 1.

11 (Defendant's Exhibit 1 was marked for  
12 identification and is attached.)

13 THE CONCIERGE: Give me one  
14 moment, Counselor. I apologize.

15 MS. COTTRELL: No, it's no  
16 worries. Sorry, Kyle, I didn't mean to  
17 throw you for a loop.

18 THE CONCIERGE: No, no, you're  
19 good. I apologize, I didn't see that you  
20 uploaded documents. I'm just going to  
21 grab that really quick.

22 MS. COTTRELL: No, it's fine.  
23 And just for the record, Lane,  
24 Freed 1 is Clemens 651270.

25 THE CONCIERGE: Okay. I

1 apologize.

2 MS. COTTRELL: Oh, you're fine.

3 THE CONCIERGE: You said we're  
4 going to mark this as Freed 1; correct?

5 MS. COTTRELL: Correct.

6 THE CONCIERGE: Okay. Got it.

7 Q. (By Ms. Cottrell) All right.

8 Mr. Freed, do you recognize Freed Exhibit  
9 1 to be an e-mail sent by you to a number  
10 of folks at Clemens dated January 17th of  
11 2016, subject, "Pork Market Commentary"?

12 A. Yes.

13 Q. Created and kept in the regular  
14 course of your business?

15 A. Yes.

16 Q. And is this one of those Informa  
17 documents that you copied and pasted?

18 A. It is.

19 Q. All right. I know you said you  
20 don't always agree with Informa, but I  
21 want to read one sentence and see what  
22 you think of this one.

23 A. Right.

24 Q. All right? In the top  
25 paragraph, second sentence, "Packer

1 margins remain exceptionally strong."

2 Let me pause there.

3 What's a packer margin?

4 A. So a packer margin is -- or  
5 packers describe it as the cutout value.  
6 It's taking the -- what the USDA  
7 publishes as the average negotiated sale  
8 price of each primal, you multiply it  
9 times the number of pounds that you --  
10 that you cut of that primal, and that's  
11 the value in that day or week of that  
12 primal. You add up all the primals and  
13 things that are arguably not primals, and  
14 that's the value of the pork from the  
15 hogs that you killed. Let's just  
16 theoretically say that the value of -- of  
17 that meat in that day or that week is a  
18 million bucks. If you paid \$800,000 for  
19 hogs, you had a \$200,000 cutout win, or  
20 packer margin in this context. If you  
21 paid \$1.2 million for those pigs, you had  
22 a \$200,000 cut -- cutout loss or -- or  
23 packer margin loss.

24 Q. All right. And just for a jury  
25 down the road, let me simplify. So the

1 packer margin, you got to look at how  
2 much you're paying to buy the hogs?

3 A. Right.

4 Q. And then how much you can sell  
5 the pork on the other hand?

6 A. If you sold at the industry  
7 average selling price.

8 Q. And the difference is the packer  
9 margin?

10 A. That's correct.

11 Q. Okay. So the sentence goes on  
12 to say, "but weekly hog slaughter volumes  
13 are in the process of declining, and as  
14 this persists over the next several weeks  
15 we could see a \$7-8 rally in cash hog  
16 values without any appreciable increase  
17 in the cutout value, shrinking packer  
18 margin back to more normal levels."

19 Do you see that?

20 A. I do.

21 Q. Sir, in layperson's terms, what  
22 is this saying? Is this saying that  
23 fewer hogs is a good thing for the  
24 packers or a bad thing for the packers?

25 A. This is saying --

1 MR. SHIFTAN: Objection to form.

2 A. Yeah. This is saying that it's  
3 a bad thing for the packers. They're  
4 saying the packer margin -- margin is  
5 going to shrink as the hog supply goes  
6 down.

7 Q. I just have to pause because the  
8 whole theory of plaintiffs' case is that  
9 packers love it when there's tight hog  
10 supply. That's the whole theory of their  
11 case. So I need you to explain to the  
12 jury why in the world Informa Economics  
13 would be saying tight hog supply is a bad  
14 thing for the packers.

15 A. They're making --

16 MR. SHIFTAN: Objection to form.

17 A. They're making the assumption  
18 that packers are going to have to start  
19 competing for hog producers' supply and  
20 have to pay more to get it.

21 Q. Well, what about at Clemens in  
22 your experience? And I know it can vary  
23 in different situations. But as a  
24 general matter, does Clemens prefer a  
25 situation where there's tight hog supply

1 or where there's abundant hog supply?

2 A. So what we prefer -- I'm going  
3 to just flip it a little bit, if that's  
4 okay. There's windfall money for packers  
5 when there is lots of pigs. When there  
6 are lots of pigs, hog prices drop like a  
7 rocket, and -- and there's windfall  
8 profits in it. So it's to packers'  
9 advantage when there's lots of pigs.

10 Q. I just need -- I'm sorry, it's  
11 just -- I just need to make sure I  
12 understand. Why is it to the packers'  
13 advantage when there's a windfall and so  
14 many pigs?

15 A. It's because of a couple of  
16 things. And without getting too far into  
17 the weeds, one of the things is falling  
18 markets are appreciable because a lot of  
19 buying is done on trailing market prices.  
20 So if yesterday the price was 26 and  
21 today it's 25, a lot of the business is  
22 done on yesterday's 26. So there's money  
23 in that. But secondly, there's --  
24 there's a reasonable bottom to what  
25 things are -- will trade at from a

1       wholesale standpoint. I'm not talking  
2       about pigs now; I'm talking about pork.  
3       There's a reasonable bottom to it, and it  
4       just doesn't go below that. So the more  
5       your cost falls on pigs because there's  
6       too many of them, the more profit there  
7       is for you.

8           Q.     All right. I'm going to change  
9       gears for a minute and turn to the USDA's  
10      mandatory price reporting, which you  
11      testified about earlier today.

12       A.     Yeah.

13       Q.     Do you remember that?

14       A.     I do.

15       Q.     Okay. Just broad strokes, help  
16      me understand, what is the USDA's  
17      mandatory price reporting system? Like,  
18      what is that?

19       A.     What -- oh, how does it work,  
20      what's the obligation of packers under  
21      the act and so forth. So the obligation  
22      -- so it -- it came from Congress,  
23      obviously, and -- and -- and its  
24      implementation was given by the  
25      agricultural marketing service of the